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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,193	11/30/2000	Etsuo Morita	09792909-4714	4426

26263 7590 09/20/2006

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EXAMINER

SONG, MATTHEW J

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/728,193

Applicant(s)

MORITA, ETSUO

Examiner

Matthew J. Song

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

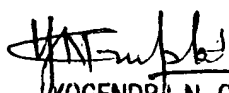
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because:
Applicant's arguments filed 8/30/2006 have been fully considered but they are not persuasive.

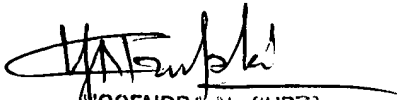
Applicant's argument that the current blocking layer **31** of Hayashi is not part of the crystal is noted but not found persuasive. Applicant alleges that the current blocking layer is part of the laser device and not part of the crystal. Applicants teach that the crystal substrate of the present invention comprises a base layer, an intermediate crystal layer, a top crystal layer, a first mask pattern **13** and a second mask pattern **15** (pg 10, ln 1-20 of the specification). Clearly applicant's definition of "the crystal" broadly includes more than one crystal layer and includes masking layers. Although Hayashi teaches forming a device structure **36**, the device layers are made of crystal layers; therefore the entire structure including the crystal substrate patterned layer **23** and the intervening layers up to and including the patterned layer **31** would be included in "the crystal". Hayashi structure is merely a plurality of crystalline layer, which would satisfy the claim of forming a first and second pattern in a crystal because the entire structure of Hayashi is satisfy applicant's limitation of "the crystal". Applicant has attempted to limit Hayashi by suggesting that "the crystal" is limited to the structure up to layer **24** and the device portion of the structure **36** is not part of the crystal, however the broadest reasonable interpretation of "the crystal" would include intervening crystal layers; therefore the entire structure from layers **21** up to layers **32** would satisfy the limitation of the crystal. The same arguments apply to claims 23, 24, 25 and 28 where applicant alleges that the current blocking layer is part of the device, not part of the crystal.

Applicant's argument that Hayashi teaches forming recesses and projections which are not formed according to the claims is noted but not found persuasive. Although Hayashi teaches

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additional steps, Hayashi teaches forming a first and second pattern which satisfies the claimed invention.

Applicant's argument regarding the cladding layer, the contact layer and the electrode is noted but not found persuasive. Applicant alleges that Hayashi does not teach a cladding layer, a contact layer and an electrode, as presently claimed. Hayashi teaches a layer **25** having a protrusion, which clearly suggests applicant's cladding layer having a protrusion, a contact layer **33** formed only above the protrusion, and an electrode **34** formed on the contact layer (Fig 13 and col 13, ln 55 to col 14, ln 15).



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